

DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

Established in 1903, the Department of Commerce (Commerce) is one of the oldest Cabinet-level agencies in the Federal Government. Commerce's mission is to create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which are responsible for managing a diverse portfolio of programs and services, ranging from trade promotion and economic development assistance to broadband and the National Weather Service.

Commerce touches Americans daily, in many ways—making possible the daily weather reports and survey research; facilitating technology that all of us use in the workplace and in the home each day; supporting the development, gathering, and transmission of information essential to competitive business; enabling the diversity of companies and goods found in America's and the world's marketplace; and supporting environmental and economic health for the communities in which Americans live.

Commerce has a clear and compelling vision for itself, for its role in the Federal Government, and for its roles supporting the American people, now and in the future. To achieve this vision, Commerce works in partnership with businesses, universities, communities, and workers to:

- **Innovate** by creating new ideas through cutting-edge science and technology from advances in nanotechnology, to ocean exploration, to broadband deployment, and by protecting American innovations through the patent and trademark system;
- Support **entrepreneurship and commercialization** by enabling community development and strengthening minority businesses and small manufacturers;
- Maintain U.S. economic **competitiveness** in the global marketplace by promoting exports, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;
- Provide effective management and **stewardship** of our nation's resources and assets to ensure sustainable economic opportunities; and
- Make informed policy decisions and enable better understanding of the economy by providing **accurate economic and demographic data**.

Commerce is a vital resource base, a tireless advocate, and Cabinet-level voice for job creation. The Regulatory Plan tracks the most important regulations that implement these policy and program priorities, as well as new efforts by the Department to remove unnecessary regulatory burdens on external stakeholders.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of Commerce's programs and activities do not involve regulation. Of Commerce's 12 primary operating units, only two bureaus will be planning actions that are considered the "most important" significant pre-regulatory or regulatory actions for FY 2020. During the next year, the National Oceanic and Atmospheric Administration (NOAA) plans to publish four rulemaking actions that are designated as Regulatory Plan actions. The United States Patent and Trademark Office will publish two rulemaking actions designated as Regulatory Plan actions. Further information on these actions is provided below.

Commerce has a long-standing policy to prohibit the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written so as to be understandable to those affected by them. The Secretary also requires that Commerce afford the public the maximum possible opportunity to participate in Departmental rulemakings, even where public participation is not required by law.

Commerce has implemented Executive Order 13771 working through its Regulatory Reform Task Force established under Executive Order 13777 to identify and prioritize deregulatory actions that each bureau within the Department can take to reduce and remove regulatory burdens on stakeholders.

In Fiscal Year 2020, Commerce expects to publish 9 regulatory actions and 45 deregulatory actions, far exceeding the requirement under Executive Order 13771 to publish two deregulatory actions for every one regulatory action. To that end, Commerce may have other deregulatory actions to implement that do not currently appear in the agenda.

National Oceanic and Atmospheric Administration

Commerce, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with

environmental issues. NOAA has the primary Federal responsibility for providing sound scientific observations, assessments, and forecasts of environmental phenomena on which resource management, adaptation to such phenomena, and other societal decisions can be made.

NOAA establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental and climate services vital to public safety and to the Nation's economy, such as weather forecasts, drought forecasts, and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving Commerce's goal of promoting stewardship by providing assessments of the global environment.

Recognizing that economic growth must go hand-in-hand with environmental stewardship, Commerce, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on "sustainable fisheries" is designed to boost long-term economic growth in a vital sector of the U.S. economy while conserving the resources in the public trust and minimizing any economic dislocation necessary to ensure long-term economic growth. Commerce is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a "win-win" situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Services (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries; protects marine mammals and Endangered Species Act-listed marine and anadromous species; and promotes economic development of the U.S. fishing industry. NOS assists the coastal States in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate commercial land-remote sensing satellite systems.

In the environmental stewardship area, NOAA's goals include: rebuilding and maintaining strong U.S. fisheries by using market-based tools and ecosystem approaches to management; conserving, protecting, and recovering marine mammals and Endangered Species Act-listed marine and anadromous species while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: understanding the impacts of a changing climate and communicating that understanding to government and private sector stakeholders enabling them to adapt; continually improving the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Magnuson-Stevens Fishery Conservation and Management Act

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3–200 nautical miles). Among the several hundred rulemakings that NOAA plans to issue in FY 2020, a number of the regulatory and deregulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for proposing implementing regulations for each managed fishery. NOAA issues regulations to implement FMPs and FMP amendments. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NOAA by which it must exercise its rulemaking responsibilities. FMPs and FMP amendments for Atlantic highly migratory species, such as bluefin tuna, swordfish, and sharks, are developed directly by NOAA, not by FMCs.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson-Stevens Act. This process, including the selection of the preferred management measures,

constitutes the development, in simplified form, of an FMP. The FMP, together with draft implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson-Stevens Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

FMPs address a variety of issues including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by market-based systems such as catch shares, which permit shareholders to harvest a quantity of fish and which can be traded on the open market. Harvest limits based on the best available scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds and establishing seasonal and area closures to protect fishery stocks.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA) provides the authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the intentional take of marine mammals. The MMPA allows, upon request, the incidental take of marine mammals by U.S. citizens who engage in a specified activity (e.g., oil and gas development, pile driving) within a specified geographic region. NMFS authorizes incidental take under the MMPA if we find that the taking would be of small numbers, have no more than a “negligible impact” on those marine mammal species or stock, and would not have an “unmitigable adverse impact” on the availability of the species or stock for “subsistence” uses. NMFS also initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. In addition, the MMPA allows NMFS to permit the collection of wild animals for scientific research or public display or to enhance the survival of a species or stock, and established the Marine Mammal Commission, which makes recommendations to the Secretaries of the Departments of Commerce and the Interior and other Federal officials on protecting and conserving marine mammals. The Act underwent significant changes in 1994 to allow for takings incidental to commercial fishing

operations, to provide certain exemptions for subsistence and scientific uses, and to require the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction.

Endangered Species Act

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be "endangered" or "threatened," and the conservation of the ecosystems on which these species depend. The ESA authorizes both NMFS and the Fish and Wildlife Service (FWS) to jointly administer the provisions of the ESA. NMFS manages marine and "anadromous" species, and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. Of the approximately 720 listed species found in part or entirely in the United States and its waters, NMFS has jurisdiction over nearly 100 species. NMFS' rulemaking actions are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing, and revising critical habitat for any listed species. In addition, under the ESA, Federal agencies consult with NMFS on any proposed action authorized, funded, or carried out by that agency that may affect listed species or designated critical habitat, or that may affect proposed species or critical habitat. These interagency consultations are designed to assist Federal agencies in fulfilling their duty to ensure Federal actions do not jeopardize the continued existence of a species or destroy or adversely modify critical habitat, while still allowing Federal agencies to fulfill their respective missions (e.g., permitting infrastructure projects or oil and gas exploration, conducting military readiness activities).

NOAA's Regulatory Plan Actions

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in Commerce's regulatory plan, NMFS is undertaking four actions that rise to the level of "most important" of Commerce's significant regulatory/deregulatory actions and thus are included in this year's regulatory plan. A description of the four rulemaking activities is provided below.

Additionally, NMFS is undertaking a series of rulemakings that are considered deregulatory, as defined by Executive Order 13771. Such actions directly benefit the regulated community by increasing access, providing more economic opportunity, reducing costs, and/or increasing flexibility. Specific

examples of such actions are the modifications to the Fisheries Finance Program and clarifications to the fishery disaster determination process, as described below. Other examples include rulemakings implementing regional Fishery Management Council actions that alleviate or reduce previous requirements.

1. Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program

for Seafood (0648-BH87): Section 539 of the Commerce, Justice, Science, and Related Agencies

Appropriations Act, 2018 (2018 Appropriations Act) directed the Secretary of Commerce to “...establish a traceability program for United States inland, coastal, and marine aquaculture of shrimp and abalone...” and by December 31, 2018 to “...promulgate such regulations as are necessary and appropriate to establish and implement the program.” The proposed Traceability Information Program for Seafood (TIPS) would establish registration, reporting and recordkeeping requirements for domestic, commercial aquaculture producers of shrimp and abalone species and products containing those species from the point of production to entry into U.S. commerce. TIPS would close the domestic reporting and recordkeeping gap and enable NOAA to add imported shrimp and abalone to the Seafood Import Monitoring Program (SIMP), which was mandated under the 2018 Appropriations Act and finalized under 50 CFR 300.324 in a Final Rule (0648-BH89; 83 FR 17762) published April 24, 2018.

2. Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the

Gulf of Mexico (0648-BB38): The Marine Mammal Protection Act (MMPA) prohibits the “take” (e.g., behavioral harassment, injury, or mortality) of marine mammals with certain exceptions, including through the issuance of incidental take authorizations. Where there is a reasonable likelihood of an activity resulting in the take of marine mammals—as is the case for certain methods of geophysical exploration, including the use of airgun arrays (i.e., “seismic surveys”)—action proponents must ensure that take occurs in a lawful manner. However, there has not previously been any analysis of industry survey activities in the Gulf of Mexico conducted pursuant to requirements of MMPA, and industry operators have been, and currently are, conducting their work without MMPA incidental take authorizations. In support of the oil and gas industry, the Bureau of Ocean Energy Management has requested 5-year incidental take regulations, which would provide

a regulatory framework under which individual companies could apply for project-specific Letters of Authorization. Providing for industry compliance with the MMPA through the requested regulatory framework, versus companies pursuing individual authorizations, would be the most efficient way to achieve such compliance for both industry and for NMFS, and would provide regulatory certainty for industry operators.

3. Fishery Disaster Determinations and Assistance under the Magnuson Stevens Act and

Interjurisdictional Fisheries Act (0648-BI97): NMFS has received input from Congress and stakeholders expressing concerns about the clarity and timeliness of the agency's fishery disaster assistance decisions. There are currently no regulations in place to describe the fishery disaster process and requirements. The administration uses the NMFS Policy on Disaster Assistance under Magnuson-Stevens Fishery Conservation and Management Act 312(A) and 315 and Interjurisdictional Fisheries Act 308(B) and 308(D) (the NMFS Policy) to guide those decisions. This regulation will provide greater clarity and consistency to accelerate the timeline for making determinations, and establish guidelines to awarding of fishery disaster funds more predictably. This regulation aims to speed up the government's responsiveness to fishery disaster requests, ensuring that appropriated funds are distributed to affected communities more quickly.

4. NOAA Mitigation Policy (0648-BJ32): Mitigation is often required to offset adverse environmental impacts from activities authorized under federal statutes, including NOAA authorities. Landowners and mitigation providers have asked for more predictability and consistency in mitigation actions taken by NOAA and other federal agencies under a variety of statutes. NOAA does not have a national policy on mitigation, and therefore mitigation approaches vary from region to region and program to program. A NOAA Mitigation Policy (Policy) is intended to improve the predictability and consistency sought by regulated entities, and will also reduce the risk of uncompensated impacts to trust resources due to ineffective mitigation. The Policy is also intended to facilitate the establishment of environmental banks – banks that provide mitigation for the requirements of multiple authorities – which improves the efficiency of regulatory compliance.

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives by maintaining and strengthening adaptable, efficient, and effective export control and treaty compliance systems as well as by administering programs to prioritize certain contracts to promote the national defense and to protect and enhance the defense industrial base.

Major Programs and Activities

BIS administers four sets of regulations. The Export Administration Regulations (EAR) regulate exports and reexports to protect national security, foreign policy, and short supply interests. The EAR also regulates U.S. persons' participation in certain boycotts administered by foreign governments. The National Security Industrial Base Regulations provide for prioritization of certain contracts and allocations of resources to promote the national defense, require reporting of foreign Government-imposed offsets in defense sales, provide for surveys to assess the capabilities of the industrial base to support the national defense and address the effect of imports on the defense industrial base. The Chemical Weapons Convention Regulations implement declaration, reporting, and on-site inspection requirements in the private sector necessary to meet United States treaty obligations under the Chemical Weapons Convention treaty. The Additional Protocol Regulations implement similar requirements with respect to an agreement between the United States and the International Atomic Energy Agency.

BIS also has an enforcement component with nine offices covering the United States. BIS export control officers are also stationed at several U.S. embassies and consulates abroad. BIS works with other U.S. Government agencies to promote coordinated U.S. Government efforts in export controls and other programs. BIS participates in U.S. Government efforts to strengthen multilateral export control regimes and to promote effective export controls through cooperation with other Governments.

The EAR includes the Commerce Control List (CCL), which describes commodities, software, and technology that are subject to licensing requirements for specific reasons for control. The Department of State, Directorate of Defense Trade Controls (DDTC), maintains the International Traffic in Arms Regulations (ITAR), including the United States Munitions List (USML), which describes defense articles subject to State's licensing jurisdiction. In Fiscal Year 2020, BIS plans to publish a number of proposed and final rules amending the EAR. These rules will cover a range of issues, including emerging and

foundational technology, country specific policies, CCL revisions based on decisions by the four multilateral export control regimes (Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement), and implementation of any interagency agreed transfers from the United States Munitions List to the CCL.

United States Patent Trademark Office

The United States Patent and Trademark Office's (USPTO) mission is to foster innovation, competitiveness and economic growth, domestically and abroad by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide.

Major Programs and Activities

USPTO is the Federal agency for granting U.S. patents and registering trademarks. In doing this, the USPTO fulfills the mandate of Article I, Section 8, Clause 8, of the Constitution that the legislative branch "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The USPTO registers trademarks based on the commerce clause of the Constitution (Article I, Section 8, Clause 3). Under this system of secured property rights, American industry has flourished. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The strength and vitality of the U.S. economy depends directly on effective mechanisms that protect new ideas and investments in innovation and creativity. The continued demand for patents and trademarks underscores the ingenuity of American inventors and entrepreneurs. The USPTO is at the cutting edge of the nation's technological progress and achievement.

The USPTO advises the President of the United States, the Secretary of Commerce, and U.S. government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes the stronger and more effective IP protection around the world. The USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements. It also provides training, education, and capacity building programs designed to foster respect for IP and encourage the development of strong IP

enforcement regimes by U.S. trading partners. USPTO administers regulations located at title 37 of the Code of Federal Regulations concerning its patent and trademark services, and the other functions it performs.

USPTO's Regulatory Plan Actions

1. NPRM: Setting and Adjusting Patent Fees during Fiscal Year 2020 (RIN 0651-AD31): The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO's fee setting authority. This fee review process involves public outreach, including, as required by the Act, public hearings held by the USPTO's Public Advisory Committees, as well as public comment and other outreach to the user community and public in general. The USPTO's NPRM published in late FY 2019, and in FY 2020, the USPTO anticipates drafting a final rule, based on public comments, to set and adjust patent fees. The USPTO will set and adjust Patent fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, improve quality, and upgrade the Office's business information technology capability and infrastructure.

2. NPRM: Setting and Adjusting Trademark Fees (0651-AD42): Following the biennial fee review process described above, the USPTO anticipates moving forward in FY 2020 with a rulemaking under its AIA authority to set and adjust certain fees for trademark services. As with the patent fee NPRM (RIN 0651-AD31), this will involve a public hearing held by the USPTO's Trademark Public Advisory Committee, as well as public comment and other outreach to the user community and public in general. The USPTO anticipates publishing an NPRM proposing adjustments to trademark fees in FY 2020. The USPTO will propose to set and adjust trademark fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of trademark operations while helping the

Office maintain a sustainable funding model and upgrade the Office's trademark-related business information technology capability and infrastructure.